



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/397,134	09/16/99	THIEN	G 19050

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QM01/0605

EXAMINER

MCALLENAN, J

ART UNIT

PAPER NUMBER

3745

12

DATE MAILED: 06/05/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/397,134	Applicant(s) THIEN, GERHARD	
	Examiner James M McAleenan	Art Unit 3745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 26 March 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-19 is/are rejected.
- 7) ☐ Claim(s) 13 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|
| 15) <input type="checkbox"/> Notice of References Cited (PTO-892) | 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 20) <input type="checkbox"/> Other: _____ |

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Response to Arguments

1. Applicant's Amendment dated 3/26/2001 has been carefully considered but is deemed non-persuasive. Claims 13-19 are pending. The new claims correct the claim objections and the indefinite claim language as set forth in the first Office action. Correction of the above matter is appreciated.
2. Applicant arguments concerning Diamond (U.S. Patent Number 3,934,964) and Kusmer (U.S. Patent Number 3,412,482) have been considered. Applicant has generally stated that Diamond does not disclose the pistons of the piston-cylinder units are constructed in such a way that the length thereof satisfied the equation given in claim 13. This statement is not agreed with because Kusmer discloses the means for the pistons of the piston-cylinder units to be constructed in such a way that the length thereof satisfies the equation of Applicant's claimed invention.
3. Applicant has argued that Diamond does not disclose the pistons of the piston-cylinder units are constructed in such a way that the length thereof satisfied the equation given in claim 13. In particular, Applicant notes there is no suggestion in Diamond or Kusmer to increase the length of the pistons as a function of the maximum depth of the immersion of his apparatus. The argument is not persuasive. Kusmer teaches a plurality of expansible and compressible chambers each equipped with a biasing weight. Kusmer teaches when the apparatus (10) is in motion, the

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chambers (14) on the downwardly moving or descending run of the apparatus are compressed by their biasing weights (16) and the air or gas is then expelled therefrom. Kusmer also discloses the expelled air or gas is transferred to the upwardly moving or ascending run of the apparatus (10) where the chambers (14) are expanded by their biasing weights (16). Thus effecting a transfer of buoyancy which, with all other things remaining equal, makes the ascending run of the apparatus more buoyant than the descending run in the body of liquid.

Claim Rejections - 35 USC § 101

4. Claims 1-12 are rejected under 35 U.S.C. 101 because the disclosed invention is inoperative and therefore lacks utility. The claimed invention is inoperative because even though the Applicant has mentioned friction in the specification (see page 2, lines 15-16; page 4, lines 1-3; and page 9, lines 1-5.), Applicant has inherent frictional problems with the claimed invention. Note, Applicant has not mentioned the impact of hitting the surface of the liquid with the piston-and-cylinder unit (12) at the lower deflection device (30) point when entering the liquid. Note, Applicant has not mentioned the sliding friction of the piston-and-cylinder unit (12) between the cylinder (20) and the cylinder chamber (16). Although Applicant has mentioned the mechanical action (see page 5, lines 32-39) of the piston-and-cylinder unit (12) between the cylinder (20) and the cylinder chamber (16), Applicant has not considered the potential frictional effect. Applicant has not mentioned the frictional effect of the piston-and-cylinder unit (12) between the cylinder (20) and the cylinder chamber (16) when positioned at the top of the device at point 12.1a as

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shown in Figure 3. Applicant has not disclosed that the claimed invention will run for any particular period of time, thus leaving the examiner to assume this may be considered as a perpetual motion apparatus. If the claimed invention is a perpetual motion apparatus, Applicant has failed to mention any exterior power used to start the claimed invention. Note further, that the Applicant has failed to mention to what purpose the supposed created energy will be used. Note, Applicant has mentioned the created energy from the claimed invention may be used for supplying torque to a generator, but for what purpose?

5. Applicant has argued the examiner's 35 USC § 103 claim rejections such that Kusmer (U.S. Patent Number 3,412,482) does not disclose the length of the pistons as a function of the maximum depth of the immersion of his apparatus. The examiner respectfully disagrees because Kusmer teaches a gravity-activated fluid displacement power generator (10) that is movable in a vertical plane. See Col. 1, lines 29-49 of Kusmer. Kusmer teaches the apparatus (10) having a plurality of expansible and compressible chambers (14) each equipped with a biasing weight (16). Kusmer discloses when the apparatus (10) is in motion, the chambers (14) on the downwardly moving or descending run of the apparatus are compressed by their biasing weights (16) and the air or gas is expelled therefrom. Kusmer teaches the expelled air or gas is transferred to the upwardly moving or ascending run of the apparatus (10) where the chambers (14) are expanded by their biasing weights (16). Thus effecting a transfer of buoyancy which, with all other things

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remaining equal, makes the ascending run of the apparatus more buoyant than the descending run in the body of liquid. See Figures 1-6, Col. 1, lines 29-49, as well as Col. 2-3 of Kusmer.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Diamond, Kusmer and Great Britain Patent Number 35,705. Diamond, Kusmer and Great Britain Patent Number 35,705 devices in the rejection of claim 1 above, discloses all of the claimed elements except that the Diamond, Kusmer and Great Britain Patent Number 35,705 devices do not disclose the specific shape or dimensions of the piston length as satisfying the equation:

Equation number 1:
$$L_k \geq h * P_f / P_k$$

wherein h is the maximum depth of the immersion of the body in to the liquid, P_f is the density of the liquid and P_k is the density of the piston of the material.

Since applicant has not disclosed that having the piston length as satisfying the equation number 1 above, at these specific shapes and dimensions solves any stated problem or is for any particular purpose and it appears that the piston lengths of Diamond, Kusmer and Great Britain Patent Number 35,705 would inherently equate to equation number 1 as claimed by applicant, it would have been an obvious matter of design choice to modify the piston length of the Diamond,

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Kusmer and Great Britain Patent Number 35,705 devices by utilizing the specific shape and dimensions for equation number 1 as claimed.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

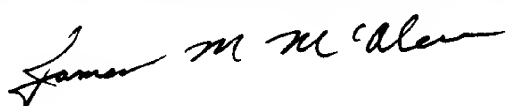
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CONTACT INFORMATION


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner James M. McAleenan whose telephone number is (703) 308-2827. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Look, can be reached on (703) 308-1044. The fax phone number for this Group is (703) 305-3588.

An inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

 6/1/01

James M. McAleenan
Patent Examiner
Art Unit 3745


EDWARD K. LOOK
SUPERVISORY PATENT EXAMINER
GROUP 3700
6/1/01